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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/864,000	05/23/2001	Yuko Aki	0828.65568	1870

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EXAMINER

JACOBS, LASHONDA T

ART UNIT PAPER NUMBER

2157

DATE MAILED: 11/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/864,000	AKI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	LaShonda T. Jacobs	2157	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 2-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Response to Amendment*

This Office Action in response to Applicants' RCE Amendment August 25, 2006. Claims 5, 6, 9 and 10-12 have been amended. Claims 2-12 are presented for further examination.

### *Claim Rejections - 35 USC § 101*

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The claimed invention is directed to non-statutory subject matter. Claim 2-8 lacks or not limited to (based on intrinsic evidence) physical articles or objects which are structurally and functionally interconnected to the code in such a manner or to establish a statutory category of invention and enable the code to act as a computer component and realize its functionality.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 2-12 rejected under 35 U.S.C. 102(e) as being anticipated by Natarajan et al (hereinafter, "Natarajan", 6,505,244)

As per claims **5** and **9**, Natarajan discloses a computer-readable medium storing a program for monitoring activities on a network, the program causing a computer system to function as:

- monitoring policy setting means for setting a monitoring policy (col. 2, lines 47-67, col. 3, lines 1-22 and col. 14, lines 56-67; Natarajan discloses a policy engine that contains policies for monitoring network elements on a network);
- monitoring means for monitoring the network according to the policy set in said monitoring policy setting means (col. 10, lines 41-57, col. 13, lines 45-67, col. 14, lines 1-4 and col. 16, lines 18-38; Natarajan discloses an event handler that monitors specific network elements on the network. The event handler reports errors detected by the network elements to the event server and the policy engine. The policy engine updates and stores new control information from various elements); and
- monitoring policy changing means for changing current policy being set in said monitoring policy setting means, according to a monitoring result reported by said monitoring means (col. 10, lines 41-57, col. 13, lines 45-67, col. 14, lines 1-4 and col. 16, lines 18-38; Natarajan discloses an event handler that monitors specific network elements on the network. The event handler reports errors detected by the network elements to the event server and the policy engine. The policy engine updates and stores new control information from various elements. The policies are dynamically/automatically modified in order to change the way in which the policy controls the network elements).
- wherein the monitoring policy changing means automatically increases the frequency (time interval or polling interval) of monitoring and adds a new object or item to the

coverage of the monitoring, when degradation in service level of the network is observed (col. 21, lines 1-27, col. 28, lines 59-67 and col. 33, lines 1-23; Natarajan discloses a policy engine for modifying/updating the control parameters for network elements in which the event handler have detected errors. The updated network control parameters effects the changes in the network. The Examiner interprets the changes in the network as adding a new object (network element) or item (parameters associated with the network elements) to the coverage of monitoring, when degradation in the service level of the network is observed since the changes on the network is based on the updating of the control parameters associated with the network elements. Therefore, Natarajan discloses wherein the monitoring policy changing means automatically increases the frequency of monitoring and adds a new object or item to the coverage of the monitoring, when degradation in service level of the network is observed).

As per claim 2, Natarajan discloses:

- wherein the monitoring policy includes a parameter that specifies how frequently the monitoring will be conducted (col. 16, lines 56-67 and col. 18, lines 6-26; Natarajan discloses a CIR policy in which various parameters(e.g. predetermined time interval) are initialized once the policy is loaded. The CIR policy includes a predetermined time interval for repeating or exiting the CIR policy procedure).

As per claim 3, Natarajan discloses:

- wherein the monitoring policy includes a parameter that specifies which object (e.g. network elements) to monitor (col. 7, lines 5-11 and lines 19-27; Natarajan discloses a monitor policy for monitoring network elements on a network).

As per claim 4, Natarajan discloses:

- wherein the monitoring policy includes a parameter that specifies which item(e.g. congestion indicators) to monitor (col. 8, lines 41-51 and col. 16, lines 56-67; Natarajan discloses a monitor policy for monitoring specific parameters associated with the network elements such as committed information, excess information rate, congestion indicators, etc.).

As per claim 6, Natarajan discloses a computer-readable medium storing a program for monitoring activities on a network, the program causing a computer system to function as:

- monitoring policy setting means for setting a monitoring policy (col. 2, lines 47-67, col. 3, lines 1-22 and col. 14, lines 56-67; Natarajan discloses a policy engine that contains policies for monitoring network elements on a network);
- monitoring means for monitoring the network according to the policy set in said monitoring policy setting means (col. 10, lines 41-57, col. 13, lines 45-67, col. 14, lines 1-4 and col. 16, lines 18-38; Natarajan discloses an event handler that monitors specific network elements on the network. The event handler reports errors detected by the network elements to the event server and the policy engine. The policy engine updates and stores new control information from various elements); and
- monitoring policy automatically changing means for changing current policy being set in said monitoring policy setting means, according to a monitoring result reported by said monitoring means (col. 10, lines 41-57, col. 13, lines 45-67, col. 14, lines 1-4 and col. 16, lines 18-38; Natarajan discloses an event handler that monitors specific network elements on the network. The event handler reports errors detected by the network

elements to the event server and the policy engine. The policy engine updates and stores new control information from various elements. The policies are dynamically/automatically modified in order to change the way in which the policy controls the network elements),

- wherein the monitoring policy changing means automatically decreases the frequency (time interval or polling interval) of the monitoring and withdraws an existing object or item from the coverage of the monitoring, when improvement in service level of the network is observed (col. 21, lines 1-27, col. 28, lines 59-67 and col. 33, lines 1-23; Natarajan discloses a policy engine for modifying/updating the control parameters for network elements in which the event handler have detected errors. The updated network control parameters effects the changes in the network. The Examiner interprets the changes in the network as withdrawing an existing object (network element) or item (parameters associated with the network elements) to the coverage of monitoring, when degradation in the service level of the network is observed since the changes on the network is based on the updating of the control parameters associated with the network elements. Therefore, Natarajan discloses wherein the monitoring policy changing means automatically decreases the frequency of the monitoring and withdraws an existing object or item from the coverage of the monitoring, when improvement in service level of the network is observed).

As per claim 7, Natarajan further discloses:

- storing a program which causes the computer system to function as resource setup changing means for changing a setup of a predetermined set of resources on the network

according to the monitoring result reported by said monitoring means (col. 29, lines 59-67 and col. 30, lines 1-21; Natarajan discloses requiring additional resources to provide a satisfactory level of quality for the application according to the changing conditions in the network. The additional resources are received as a result of an increase in the allotted bandwidth. Therefore, Natarajan explicitly discloses storing a program which causes the computer system to function as resource setup changing means for changing a setup of a predetermined set of resources on the network according to the monitoring result reported by said monitoring means).

As per claim 8, Natarajan further discloses:

- storing a program which causes the computer system to function as event detecting means for detecting the occurrence of a particular event in a predetermined resource on the network, wherein said monitoring policy changing means changes the current monitoring policy in response to the particular event detected by said event detecting means (col. 10, lines 41-57, col. 13, lines 45-67, col. 14, lines 1-4 and col. 16, lines 18-38; Natarajan discloses an event handler that monitors specific network elements on the network. The event handler reports errors detected by the network elements to the event server and the policy engine. The policy engine updates and stores new control information from various elements. The policies are dynamically/automatically modified in order to change the way in which the policy controls the network elements).

As per claim 9, Natarajan discloses a network monitoring system which monitors activities on a network, comprising:



- monitoring policy setting means for setting a monitoring policy (col. 2, lines 47-67, col. 3, lines 1-22 and col. 14, lines 56-67; Natarajan discloses a policy engine that contains policies for monitoring network elements on a network);
- monitoring means for monitoring the network according to the policy set in said monitoring policy setting means (col. 10, lines 41-57, col. 13, lines 45-67, col. 14, lines 1-4 and col. 16, lines 18-38; Natarajan discloses an event handler that monitors specific network elements on the network. The event handler reports errors detected by the network elements to the event server and the policy engine. The policy engine updates and stores new control information from various elements); and
- monitoring policy changing means for automatically changing current policy being set in said monitoring policy setting means, according to a monitoring result reported by said monitoring means (col. 10, lines 41-57, col. 13, lines 45-67, col. 14, lines 1-4 and col. 16, lines 18-38; Natarajan discloses an event handler that monitors specific network elements on the network. The event handler reports errors detected by the network elements to the event server and the policy engine. The policy engine updates and stores new control information from various elements. The policies are dynamically/automatically modified in order to change the way in which the policy controls the network elements; and
- wherein the monitoring policy changing means automatically increases the frequency (time interval or polling interval) of monitoring and adds a new object or item to the coverage of the monitoring, when degradation in service level of the network is observed (col. 21, lines 1-27, col. 28, lines 59-67 and col. 33, lines 1-23; Natarajan

discloses a policy engine for modifying/updating the control parameters for network elements in which the event handler have detected errors. The updated network control parameters effects the changes in the network. The Examiner interprets the changes in the network as adding a new object (network element) or item (parameters associated with the network elements) to the coverage of monitoring, when degradation in the service level of the network is observed since the changes on the network is based on the updating of the control parameters associated with the network elements. Therefore, Natarajan discloses wherein the monitoring policy changing means automatically increases the frequency of monitoring and adds a new object or item to the coverage of the monitoring, when degradation in service level of the network is observed).

As per claim 10, Natarajan discloses a method of monitoring activities on a network, comprising the steps of:

- (a) setting a monitoring policy (col. 2, lines 47-67, col. 3, lines 1-22 and col. 14, lines 56-67; Natarajan discloses a policy engine that contains policies for monitoring network elements on a network);
- (b) monitoring the network according to the policy set at said step (a) of setting (col. 10, lines 41-57, col. 13, lines 45-67, col. 14, lines 1-4 and col. 16, lines 18-38; Natarajan discloses an event handler that monitors specific network elements on the network. The event handler reports errors detected by the network elements to the event server and the policy engine. The policy engine updates and stores new control information from various elements); and

(c) automatically changing the current monitoring policy that is originally at said step (a) of setting, according to a monitoring result obtained at said step (b) of monitoring (col. 10, lines 41-57, col. 13, lines 45-67, col. 14, lines 1-4 and col. 16, lines 18-38; Natarajan discloses an event handler that monitors specific network elements on the network. The event handler reports errors detected by the network elements to the event server and the policy engine. The policy engine updates and stores new control information from various elements. The policies are dynamically/automatically modified in order to change the way in which the policy controls the network elements); and

(d) automatically increasing the frequency (time interval or polling interval) of the monitoring and adding a new object and/or item to the coverage of the monitoring, when degradation in the service level of the network is observed (col. 21, lines 1-27, col. 28, lines 59-67 and col. 33, lines 1-23; Natarajan discloses a policy engine for modifying/updating the control parameters for network elements in which the event handler have detected errors. The updated network control parameters effects the changes in the network. The Examiner interprets the changes in the network as adding a new object (network element) or item (parameters associated with the network elements) to the coverage of monitoring, when degradation in the service level of the network is observed since the changes on the network is based on the updating of the control parameters associated with the network elements. Therefore, Natarajan discloses wherein the monitoring policy changing means automatically increases the frequency of monitoring and adds a new object or item to the coverage of the monitoring, when degradation in service level of the network is observed)

As per claim **11**, Natarajan discloses a network monitoring system which monitors activities on a network, comprising:

- monitoring policy setting means for setting a monitoring policy (col. 2, lines 47-67, col. 3, lines 1-22 and col. 14, lines 56-67; Natarajan discloses a policy engine that contains policies for monitoring network elements on a network);
- monitoring means for monitoring the network according to the policy set in said monitoring policy setting means (col. 10, lines 41-57, col. 13, lines 45-67, col. 14, lines 1-4 and col. 16, lines 18-38; Natarajan discloses an event handler that monitors specific network elements on the network. The event handler reports errors detected by the network elements to the event server and the policy engine. The policy engine updates and stores new control information from various elements); and
- monitoring policy changing means for automatically changing current policy being set in said monitoring policy setting means, according to a monitoring result reported by said monitoring means (col. 10, lines 41-57, col. 13, lines 45-67, col. 14, lines 1-4 and col. 16, lines 18-38; Natarajan discloses an event handler that monitors specific network elements on the network. The event handler reports errors detected by the network elements to the event server and the policy engine. The policy engine updates and stores new control information from various elements. The policies are dynamically/automatically modified in order to change the way in which the policy controls the network elements); and
- wherein the monitoring policy changing means automatically decreases the frequency (time interval or polling interval) of the monitoring and withdraws an existing object

and/or items from the coverage of the monitoring, when improvement in service level of the network is observed (col. 21, lines 1-27, col. 28, lines 59-67 and col. 33, lines 1-23; Natarajan discloses a policy engine for modifying/updating the control parameters for network elements in which the event handler have detected errors. The updated network control parameters effects the changes in the network. The Examiner interprets the changes in the network as withdrawing an existing object (network element) or item (parameters associated with the network elements) to the coverage of monitoring, when degradation in the service level of the network is observed since the changes on the network is based on the updating of the control parameters associated with the network elements. Therefore, Natarajan discloses wherein the monitoring policy changing means automatically decreases the frequency of the monitoring and withdraws an existing object or item from the coverage of the monitoring, when improvement in service level of the network is observed).

As per claim 12, Natarajan discloses a method of monitoring activities on a network, comprising the steps of:

- (a) setting a monitoring policy (col. 2, lines 47-67, col. 3, lines 1-22 and col. 14, lines 56-67; Natarajan discloses a policy engine that contains policies for monitoring network elements on a network);
- (b) monitoring the network according to the policy set at said step (a) of setting (col. 10, lines 41-57, col. 13, lines 45-67, col. 14, lines 1-4 and col. 16, lines 18-38; Natarajan discloses an event handler that monitors specific network elements on the network. The event handler reports errors detected by the network elements to the event server and the

policy engine. The policy engine updates and stores new control information from various elements); and

(c) automatically changing the current monitoring policy that is originally at said step (a) of setting, according to a monitoring result obtained at said step (b) of monitoring (col. 10, lines 41-57, col. 13, lines 45-67, col. 14, lines 1-4 and col. 16, lines 18-38; Natarajan discloses an event handler that monitors specific network elements on the network. The event handler reports errors detected by the network elements to the event server and the policy engine. The policy engine updates and stores new control information from various elements. The policies are dynamically/automatically modified in order to change the way in which the policy controls the network elements); and

(d) automatically decreasing the frequency (time interval or polling interval) of the monitoring and withdrawing an existing object and/or item to the coverage of the monitoring, when improvement in the service level of the network is observed (col. 21, lines 1-27, col. 28, lines 59-67 and col. 33, lines 1-23; Natarajan discloses a policy engine for modifying/updating the control parameters for network elements in which the event handler have detected errors. The updated network control parameters effects the changes in the network. The Examiner interprets the changes in the network as withdrawing an existing object (network element) or item (parameters associated with the network elements) to the coverage of monitoring, when degradation in the service level of the network is observed since the changes on the network is based on the updating of the control parameters associated with the network elements. Therefore, Natarajan discloses wherein the monitoring policy changing means automatically decreases the frequency of the

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monitoring and withdraws an existing object or item from the coverage of the monitoring, when improvement in service level of the network is observed).

***Response to Arguments***

3. Applicant's arguments with respect to claims 2-12 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaShonda T. Jacobs whose telephone number is 571-272-4004. The examiner can normally be reached on 8:30 A.M.-5:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on 571-272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ltj  
November 13, 2006

LaShonda T Jacobs  
Examiner  
Art Unit 2157

